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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,916	09/24/2003	Po-Hung Yau	OR0314IT	8461
22192	7590	10/04/2005		
LAW OFFICE OF LIAUH & ASSOC. 4224 WAIALAE AVE STE 5-388 HONOLULU, HI 96816			EXAMINER KIM, RICHARD H	
			ART UNIT	PAPER NUMBER
			2871	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/671,916

Applicant(s)

YAU ET AL.

Examiner

Richard H. Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Farn et al. (US 5,682,265).

Referring to claim 1, Farn et al. discloses a diffractive micro-structure color wavelength division device having a complex two-dimensional surface phase micro-structure (col. 6, lines 7-11) wherein the micro-structure has a distribution and geometric characteristic dimension calculated to provide a multi-wavelength modulation function and form a diffractive micro-structure color wavelength division element enabling wavelength division and focus of white light of an incident backlight source, so as to cause wavelength division and focus different positions of space by three spectrum regions of wavelength of red, green and blue (Fig. 9).

Referring to claims 2 and 13, the limitation of the two-dimensional surface phase microstructure of the color wavelength division device has a geometric characteristic microstructure which is calculated on the basis of a diffractive theory of diffraction phenomenon and binary optics, and through an operation of claimed phase iteration algorithm, have been considered, however, it has been recognized that '[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the

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product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process” *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). See also MPEP 2113. Since the recited limitation does not distinguish the device structurally, it does not further limit the claim, so claims 2 and 13 are anticipated.

Referring to claims 3 and 4, Farn et al. disclose a single unit of the color wavelength division device is capable of producing in space a respective single point wavelength division and focus of three wavelengths (Fig. 9). Furthermore, it has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

Referring to claim 5, Farn et al. discloses that the color wavelength device can be arranged to form an array (Fig. 9)

Referring to claim 6, Farn et al. discloses the device wherein a plurality of the color wavelength division device area arrange in array in a liquid crystal panel to divide a light source into three different spectrum regions of wavelengths red, green, and blue, with the wavelengths being focused on corresponding red, green, blue TFT subpixels of the liquid crystal panel so as to provide colors which are essential to color image display (Fig. 5, ref. 56).

Referring to claim 7, Farn et al. discloses the device wherein the color wavelength division device is used for multi-point wavelength division and focus of multi-points corresponding to arrangement of red, green, blue TFT subpixels of a liquid crystal panel depends

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on color focal point distribution of the microstructure of the color wavelength division film and arrangement of the TFT subpixels (Fig. 5, ref. 56).

Referring to claim 8, Farn et al. discloses the device wherein the color wavelength division device can be distributed on various positions in space (Fig. 9; R, G, B).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farn et al.

Farn et al. discloses the device previously recited, but does not disclose that the substrate is made of a polymeric material with light transparency, quartz, or glass.

It would have been obvious to one having ordinary skill in the art at the time the invention was made for it to be made of a polymeric material with light transparency, quartz or glass, since quartz and glass are well known materials in the art to be used as transparent materials mainly because of its transparent qualities as well as high resistance to heat.

5. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farn et al. in view of Ma et al. (US 6,512,560 B2).

Farn et al. discloses the device previously recited, but fails to disclose that the device is made on one side of a substrate having a polarized function or a polarized transverse function.

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Ma et al. discloses a device comprising a substrate having a polarized function or a polarized transverse function (Fig. 6a, ref. 260, 270).

It would have been obvious to one having ordinary skill in the art at the time the invention was made for the substrate to have a polarized function or a polarized transverse function since one would be motivated to allow only certain polarized light through, thereby improving display quality.

Response to Arguments

6. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard H. Kim whose telephone number is (571)272-2294. The examiner can normally be reached on 9:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert H. Kim can be reached on (571)272-2293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richard H Kim
Examiner
Art Unit 2871

RHK

Andrew Schechter
ANDREW SCHECHTER
PRIMARY EXAMINER